

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14465 of Barbara Sussman and Joann Tannenbaum, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from deli-carryout, not seating, ground floor, to an animal clinic, ground floor, in a C-1 District at premises 5515 South Dakota Avenue, N.E., (Square 3760, Lot 814).

HEARING DATE: July 16, 1986

DECISION DATE: July 16, 1986 (Bench Decision)

FINDINGS OF FACT:

1. The site, known as premises 5515 South Dakota Avenue, N.E., is located on the north side of South Dakota Avenue west of Kennedy Street and east of Riggs Road in a C-1 District.

2. The site is improved with a one-story stucco and glass structure designed for a drive-in, fast-food service establishment, containing space for 39 automobiles.

3. The site has been occupied since 1964 by various fast-food establishments. The last one in occupancy vacated in March, 1985. The property has been vacant since then, except for unauthorized parking of automobiles.

4. The applicants have contracted to sell the site to The Tailwaggers Club, Inc., a non-profit corporation.

5. Pursuant to Sub-section 8207.2 of the Zoning Regulations, the applicants are seeking a special exception under Paragraph 7106.11 to change a nonconforming use from deli-carryout (fast-food establishment) to an animal clinic.

6. Prior to Zoning Commission's Order No. 440, fast food service establishments were included in the definition of "restaurant" and, thus, were permitted as a matter of right in a C-1 District. Because of the crowds and traffic at all hours which they attract, under that Order such establishments were prohibited in a C-1 District, except for those existing uses which became nonconforming upon adoption of the Order. The site is permitted as one of these nonconforming uses. A fast food establishment is first permit as a matter-of-right in a C-2-B District.

7. A veterinary hospital is first permitted as a matter-of-right use in the C-2-A District.

8. The Club's animal clinic will be open to the public for four hours during the mid-day, Monday through Friday.

9. The clinic will service only people's pets and will perform no operations, keep no animals on the premises overnight and treat no more than 20 to 30 animals per day. It will conduct substantially less intensive activities than a veterinary hospital.

10. By memorandum dated July 9, 1986, the Office of Planning (OP) recommended approval of the application as it satisfied the criteria of Paragraph 7106.11. The OP reported that the proposed use will not adversely affect the present character or future development of the surrounding area. The subject premises are contained in a C-1 District. Immediately southeast of the site is a gasoline service station. To the northeast, behind a retaining wall and at a considerable grade differential, is an R-2 District characterized by semi-detached dwelling units. The wall and grade differential isolate the nearby residential dwellings from the subject site. Immediately to the northwest is a 48 unit apartment house contained within the C-1 District. Although potential exists for conflict between the proposed use and this apartment house, OP noted the apartment house is located 60 feet from the proposed animal clinic. The proposed animal clinic will not create any deleterious external effects. The proposed nonconforming use is a less intensive use than the fast food restaurant which previously occupied the site. The operating characteristics of the proposed use are such as to impose few impacts on the surrounding residential uses. Specifically, the proposed clinic will operate between the hours of 1:00 P.M. to 4:30 P.M. Monday through Friday. The clinic will not be open during mornings, evenings or weekends. The clinic will be staffed by a veterinarian and one or two assistants. The clinic will offer limited medical services to domestic animals which include vaccinations, nail clipping, general health examinations, and worming. No surgery, spaying or neutering will be performed on the premises and no animals will be kept overnight at the facility. Furthermore, animals will not be euthanized on the premises. Finally, based on past operating history at another location, the clinic expects to examine and treat 20 to 30 animals per afternoon of operation. This will not result in a great increase in traffic or congestion in the area because of the relatively few people who use the facility, the fact that the clinic will operate in non-rush hour periods, and the adequate on-site parking. OP was of the opinion that conditions as to hours of operation and types of medical

services suitable for performance at the subject site should be imposed.

11. Advisory Neighborhood commission 4B, by letter dated July 3, 1986, unanimously recommended the approval of the application, subject to the following conditions:

- a. the clinic shall operate four hours a day, Monday through Friday only; no holidays;
- b. debris from the clinic shall be placed in plastic bags and locked in dumpsters;
- c. no animals shall be kept on the premises overnight;
- d. the clinic shall only administer shots and conduct examinations of animals;
- e. the clinic shall remove daily any carcasses from the premises;
- f. the facility shall be air conditioned and operate under sterile conditions;
- g. the parking lot shall be cleaned on a daily basis;
- h. there shall be no exterior housing (cages) for animals.

The Board concurs with the reasoning and recommendations of the ANC.

12. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicants are seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and Sub-section 8207.2 of the Zoning Regulations.

Paragraph 7106.11 states in pertinent part that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, provided that:

- 7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass

the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, design and siting effects.

7106.113 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

7106.116 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

The Board concludes that the applicant has met the burden of proof. The use will not adversely affect the development of the surrounding area. It will not create any deleterious external effects. The proposed use would be more restrictive than the previous use, a fast food restaurant. The grant of the application as conditioned below will not damage the value, utilization, or enjoyment of property in the neighborhood.

The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and it will not affect adversely the use neighboring property.

The Board concludes that it has accorded to Advisory Neighborhood Commission 4B the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:


1. The clinic shall operate for four hours, Monday through Friday only; no holidays.
2. Debris from the clinic shall be placed in plastic bags and locked in a trash receptacle.
3. No animals shall be kept on the premises over night.
4. The clinic shall only administer shots and conduct examinations of animals.

5. The clinic shall remove daily any carcasses from the premises.
6. The facility shall be air conditioned.
7. The parking lot shall be cleaned on a daily basis.
8. There shall be no exterior housing (cages) for animals.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris, Paula L. Jewell, Carrie L. Thornhill to grant; Maybelle T. Bennett to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
EDWARD L. CURRY  
Acting Executive Director

FINAL DATE OF ORDER: AUG 7 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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